

# Your Family

## Family Law Issues

### Filing for Divorce

Idaho is a “no fault” divorce state, which means that you don’t have to prove that your spouse did anything wrong in order to get a divorce and you do not need your spouse’s consent to file. You just need to prove that there are “irreconcilable differences” between you and your spouse.

**Residency.** You must live in Idaho for six full weeks in a row before filing for divorce.

**Community Property & Debt.** In Idaho, a court will assume that both spouses contributed equally to the marriage, even if only one spouse worked. The property earned by either spouse during the marriage is called “community property” and will usually be split 50/50 at divorce. The community’s debts will also be divided equally. However, you can ask for a different arrangement if your unique situation (income, age, illness, etc.) justifies a different division.

**Pro se.** You can file divorce “pro se” (by yourself, without an attorney). All of the forms you will need are available at the Court’s Assistance Office of your local county’s courthouse, and also online at: [www.courtselfhelp.idaho.gov](http://www.courtselfhelp.idaho.gov). Find more information and download free, interactive legal forms you can use to file for divorce at: [www.idaholegalaid.org](http://www.idaholegalaid.org).

### Grandparents Raising Grandchildren

Grandparents sometimes have difficulty proving to hospitals or schools they have authority to make decisions for a grandchild. If you are taking care of your grandchild, even for a short time, you should get written permission (called a parental power of attorney) from at least one of the child’s parents. The parental power of attorney form is available at [idaholegalaid.org](http://idaholegalaid.org). If you are raising your

grandchild for a longer period of time, you may ask a court to declare that you are your grandchild's permanent legal guardian. This will give you legal authority to care for a grandchild and will often let you place your grandchild on your health insurance.

## **Petitioning for Guardianship of a Minor**

To become a child's guardian, you have to show a judge that you are qualified to be the child's guardian and that a guardianship is in the best interest of the child. You also have to show the court that the child's parents have abused, neglected or abandoned the child or cannot provide a stable home environment. If the parent fails to keep a "normal parental relationship" for six months without a good excuse, the court will assume that the parent has abandoned the child. You will have to send notices to the child's parents that you are petitioning for a guardianship. The court will likely appoint a Guardian ad litem (an attorney) to speak for the child during the process. If you are appointed guardian, you will have to file an Annual Report with the court. An attorney is generally needed to successfully pursue a guardianship case. You can find resources for grandparents raising a grandchild at:

<http://www.211.idaho.gov/kincare/Kincare.html>.

## **Guardianships & Conservatorships of Adults**

If a person loses the ability to take care of their own health and safety, a concerned friend or family member may ask the Court to appoint a Guardian (someone to make personal decisions about matters such as health care and housing) and/or a Conservator (someone to make decisions about money) for the protected person. In order for a court to grant a guardianship or conservatorship, it must find that the protected person is incapacitated. If there is an urgent risk that the person will be greatly harmed (by themselves or others), a temporary guardian can be appointed. This kind of emergency guardianship only lasts 90 days, during which time a permanent guardianship can be pursued.

The Court will take precautions to make sure that the protected person is taken care of and actually needs someone to make decisions for her. The protected person has to receive notice about the proposed guardianship. The court will appoint a court visitor who interviews the protected person and the proposed guardian, visits where the protected person will live, and makes a report for the court. The court will also

appoint a physician to examine the protected person and give a written opinion regarding whether she is incapacitated. Finally, the court will appoint a Guardian ad litem (an attorney) to represent the protected person's interests. The court will review the recommendations of the physician, court visitor, and Guardian ad Litem and hold a hearing to determine whether a guardianship and/or conservatorship is needed. The protected person has the right to attend this hearing, and the right to hire their own private attorney.

Guardians must pass an online training course and submit a yearly report to the court about the protected person's health and living situation and Conservators must submit annual accountings to the Court about the protected person's income, expenses and assets. You can find free Conservator and Guardian reporting forms at [www.courtselfhelp.idaho.gov](http://www.courtselfhelp.idaho.gov), and a free Guardian's Annual Report form at [www.idaholegalaid.org/SelfHelp/GuardianAnnualReport](http://www.idaholegalaid.org/SelfHelp/GuardianAnnualReport).

## Complaints

If you have reason to believe that a guardian or conservator is not fulfilling their duties to the protected person (e.g., stealing money, withholding medical treatment, failing to provide necessary food or shelter, etc.), then you can file a Guardianship-Conservatorship Complaint with the court. The form is available at [idaholegalaid.org](http://idaholegalaid.org) or through your local Court Assistance Office.

Last updated on July 07, 2016.

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